

FILED**DEC 08 2017**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT of TEXAS
SAN ANTONIO DIVISION**

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY AN DEPUTY

UNITED STATES of AMERICA,**Plaintiff****v.****MARK GRIMES,****Defendant**

§
§
§
§
§
§
§
§
§

**Criminal Case
No. SA-14-CR-790-DAE**

ORDER

Before the Court is Defendant Mark Grimes' Motion for Extension of Time to File Notice of Appeal (Docket Entry # 70) which this Court construes as a motion to extend the time to appeal pursuant to Fed. R. App. P. 4(b)(5).

Defendant pleaded guilty to distribution of child pornography in violation of 18 U.S.C. § 2252A(a)(2), and was sentenced to 185 months. This Court's Judgment and Commitment Order was entered July 5, 2017. Defendant's pro se Notice of Appeal and Motion for Extension of Time to Appeal were filed November 16, 2017. Defendant claims he discussed an appeal with his attorney, expected his attorney to file the appeal, but his counsel failed to do so.

Pursuant to Federal Rule of Appellate Procedure 4(b)(1)(A)(i) a defendant in a criminal case must file his notice of appeal within 14 days of the judgment or order appealed from. Rule 4(b)(5) provides the district court may extend the time to file a notice of appeal by 30 days after the time prescribed for appeal if the moving party shows good cause or excusable neglect. Defendant is not entitled to relief pursuant to Rule 4(b)(5) because his time to appeal expired on July 19, 2017, and therefore a motion under Rule 4(b)(5), which must be filed no later than thirty days thereafter, is untimely.

Therefore Defendant's Motion for Extension of Time to File Notice of Appeal (Docket Entry # 70) is **DENIED**.

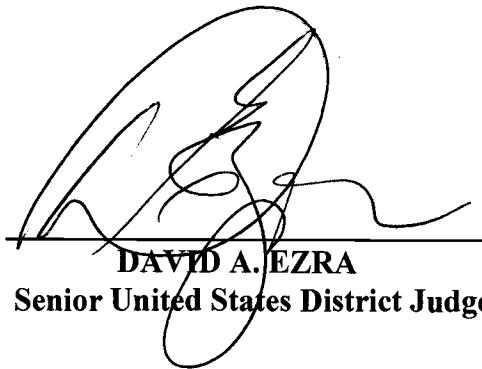
Defendant's allegation that his former-counsel was ineffective for failing to appeal as requested may be presented in a 28 U.S.C. § 2255 motion to vacate federal sentence. This Court declines to construe his current filing as such a motion because it is vague and conclusory. If Defendant wishes to proceed with a § 2255 motion, he should file such a motion stating *specific facts* (who, what, where, when) in support of his claims. **The Clerk of Court shall send Defendant a copy of the § 2255 form used in this Court.**

Defendant's Motion for Relevant Portions of the Transcripts (Entry # 71) is **DENIED**. Defendant failed to demonstrate he cannot afford the copy costs; Defendant should contact the Clerk of Court to arrange for payment of the copy costs. Moreover, such records should be available from Defendant's former-counsel.

DATED: December

8

, 2017



DAVID A. EZRA
Senior United States District Judge